

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION, CINCINNATI
4
5 EVERETT W. WHISMAN, et al.: Case No. C-1-02-406
6 Plaintiffs, : Judge Beckwith
7 V. : Magistrate Sherman
8 ZF BATAVIA, LLC, et al., :
9 Defendants. :

10 Deposition of CHARLES R. PEARCE, taken on
11 Monday, August 11, 2003, commencing at 11:32 a.m.,
12 at the offices of Baker & Hostetler LLP, 312 Walnut
13 Street, Suite 3200, Cincinnati, Ohio, before
14 Susan M. Barhorst, Notary Public.

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16

Cross-Examination

17

by Mr. Hunter 4, 107

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by Mr. VanWay 60, 111

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1	PEARCE DEPOSITION EXHIBITS	MARKED/ IDENTIFIED
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1 CHARLES R. PEARCE

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. HUNTER:

5 Q. Sir, will you please state your name
6 for the record?

7 A. Charles R. Pearce.

8 Q. And your current address?

9 A. 4376 Eastwood Drive, Apartment 1211,
10 Batavia, Ohio 45103.

11 Q. Mr. Pearce, I don't think we've ever
12 met. My name's John Hunter. I'm an attorney for
13 ZF Batavia.

14 A. Hi, John.

15 Q. Have you ever had your deposition
16 taken before?

17 A. No, sir.

18 Q. Okay. Let me try and run you through
19 a couple ground rules, in terms of I'm going to do
20 my best to ask a clear question and hopefully loud
21 enough that you can hear me. But I do have a bad
22 tendency of speaking quickly and sometimes mumbling
23 and other nasty habits.

24 If at any time you don't hear me, you

1 don't understand the question or you just can't
2 fairly answer the question, I do want you to let me
3 know, okay? And when you answer, you've got to
4 say --

5 A. Yes.

6 Q. -- say the answer out loud because
7 that's the only way the court reporter can take
8 that down, okay?

9 A. Yes.

10 Q. Is there anything today that would
11 prevent you from being able to go forward with your
12 deposition, whether it's a personal issue, a
13 medical issue or otherwise?

14 A. Not that I'm aware of.

15 Q. Okay. If at any point in time during
16 the deposition you need to take a break, the only
17 thing that I would ask is that you answer any
18 question before you, and then certainly we can take
19 a break.

20 A. Okay.

21 Q. You've sat through a good portion of
22 Mr. Williams' deposition and we used in his
23 deposition the term Ford transitional employee.
24 You heard that?

1 A. Yes, sir.

2 Q. Okay. To your way of thinking, what
3 is a Ford transitional employee?

4 A. State that again. I don't --

5 Q. Well, do you know what I mean by a
6 Ford transitional employee?

7 A. That's what I am, yes. That's what
8 I'm -- yes.

9 Q. Okay. And what is a Ford transitional
10 employee?

11 A. It's a group of employees that priorly
12 worked for Ford and they transitioned to ZF
13 Batavia.

14 Q. Okay, yeah. And I'm not trying to
15 trick you. I want to make sure when I use that
16 term today, we have the same general understanding
17 as to what that means.

18 When did you begin with Ford?

19 A. I'd have to pull my card out. Almost
20 10 years ago, '90 -- whatever 10 years is.

21 Q. All right. And what was your original
22 position with Ford?

23 A. I was hired as a maintenance
24 supervisor.

1 Q. And that was approximately '90, '91?

2 A. Yeah. I can tell you -- I can tell
3 exact --

4 Q. Okay.

5 A. -- if you need to know, we can do
6 that.

7 MR. SIMON: They have a document, too.

8 Go ahead. That's fine.

9 A. I guess most people should know their
10 date of hire, but --

11 Q. No, I just -- I just want to make
12 sure, again, that we are on the same wavelength
13 because one question will follow another. And if
14 we start out not on the same page, it's only going
15 to get worse.

16 A. So much for that lost record.

17 MR. SIMON: You don't have to do that.

18 That's all right. Mr. Pearce is shuffling through
19 his wallet to find --

20 THE WITNESS: There we go, 9/16/93.

21 Q. All right. There we go.

22 MR. SIMON: You were right when you
23 said 10 years ago.

24 MR. HUNTER: Okay.

1 MR. SIMON: 10 years ago was --

2 THE WITNESS: 10 years ago, yes.

3 MR. SIMON: -- was very accurate.

4 BY MR. HUNTER:

5 Q. All right. And you hired in as a
6 maintenance supervisor?

7 A. At present?

8 Q. No. You hired in as a maintenance
9 supervisor?

10 A. Yes.

11 Q. What was the next job you held?

12 A. The next position I held would be an
13 MPS, but that was not with Ford Motor Company.

14 Q. Okay. So during your tenure at Ford,
15 your employment was that of maintenance supervisor?

16 A. That's correct.

17 Q. Okay. Was that a salaried position?

18 A. Yes, sir.

19 Q. Did you receive --

20 A. Well, yes, sir.

21 Q. You had hesitation. If you want to
22 explain something there, there's an issue, just let
23 me know.

24 A. It's not UAW.

1 Q. Okay.

2 A. I'll clarify it that way.

3 Q. Okay. Well, were you paid a salary?

4 A. I was paid a base salary, plus
5 overtime.

6 Q. Okay. And how was the overtime paid?

7 A. What do you mean?

8 Q. How was it calculated? How was it
9 reported? How did you get paid overtime?

10 A. That depended upon the direct
11 supervisor that you had, but in the maintenance
12 organization, it was always anything over one hour
13 overtime in a given day would be paid.

14 Q. Okay. And so it's that notion of
15 casual time? Is that the hour --

16 A. There was no such thing as casual
17 time.

18 Q. Okay. So why isn't the first hour,
19 then, paid?

20 A. I did not say the first hour was
21 unpaid. I said the first hour overtime -- if for
22 Ford Motor Company I worked eight and a half hours,
23 that was straight time. That was my salary.

24 Q. Okay.

1 A. Okay. If I worked nine hours, there
2 was no pay with the supervisor that I had. Other
3 supervisors in the plant actually got half hours.
4 That's why I was saying it -- we depended upon who
5 you were working for.

6 Q. Okay.

7 A. If I worked nine and a half hours,
8 okay, then I received an hour overtime pay.

9 Q. Okay. And with respect to -- well,
10 let me ask it this way. You said there is no such
11 thing as casual time at Ford?

12 A. We weren't offered casual time. I was
13 never offered casual time at Ford. Maybe we have a
14 different --

15 Q. Yeah.

16 A. -- definition as to what casual --

17 Q. Yeah.

18 A. -- time is.

19 Q. Tell me what casual time is to you.

20 A. Casual time, to me, is if I -- if I
21 worked three hours over or something, then at
22 another given day, I would get three hours off.

23 Q. How about -- would that be comp time?

24 A. You could use the word comp time.

1 Q. Okay. All right. So during your
2 tenure at Ford, you were maintenance supervisor.
3 You came -- when you came over to Batavia, do you
4 remember what you came over as, what your position
5 was?

6 A. A maintenance supervisor. What, do
7 you mean when I came over to ZF Batavia?

8 Q. Mm-hmm.

9 A. Maintenance supervisor.

10 Q. Okay. Has your title changed since
11 you came over to ZF Batavia?

12 A. Yes, it has.

13 Q. Okay. What was the first change that
14 you can recall?

15 A. There's only been one.

16 Q. Okay.

17 A. I was given a position of maintenance
18 MPS, which is Maintenance Planning Specialist.

19 Q. What's your current title at ZF
20 Batavia?

21 A. Maintenance MPS.

22 Q. The current position that you have
23 with ZF Batavia, are you paid overtime?

24 A. Am I -- am I paid overtime? Am I paid

1 all overtime that I should be paid for, no. Am I
2 paid overtime, yes.

3 Q. Okay. Well, let's do this. Did you
4 attend any meetings relative to your decision to
5 become a Ford transitional, to basically join ZF
6 Batavia?

7 A. Yes, I was -- I was at the meetings
8 that were in the cafeteria; was also at the meeting
9 when they did the announcement in the plant.

10 Q. All right. Let's talk about the
11 announcement in the plant. That was out in the
12 plant, outside the hospital area. There was a
13 television screen mounted out there somewhere?

14 A. Yes.

15 Q. And I believe Mr. Nasser spoke at that
16 time?

17 A. He probably did, but whether --

18 Q. Okay.

19 A. Okay. He probably did.

20 Q. You're just not sure?

21 A. I'm in a state of shock at that point
22 in time. Not here --

23 Q. Back then?

24 A. -- I mean, my plant is being sold,

1 okay, so --

2 Q. All right.

3 A. There was all kind of people. The
4 Lieutenant Governor was in from Ohio; helicopters
5 were landing; news media was there; screens were
6 going off -- you know, rah, rah, great party.

7 Q. Okay. Do you remember anything that
8 was said at that time?

9 A. That this was a joint venture between
10 Ford and ZF --

11 Q. Okay.

12 A. -- and that all the Ford people
13 were -- you know, could continue -- basically
14 continue to work there. I -- I hate to say this,
15 but the typical management action when they come
16 in. There will be no changes. You know,
17 everything is going to be the same, dah, dah, dah.
18 But it was said that we would stay there.

19 Q. You used the term "typical
20 management" --

21 A. I been through other plant closings --

22 Q. Okay.

23 A. -- so when they come in, they always
24 say, there'll be no changes. Everything is fine.

1 Q. And I would gather from your tone, you
2 simply don't believe that to be the case?

3 A. Not on the first announcement.

4 Q. Okay. Basically you're telling me you
5 didn't believe them when they came in and said
6 that?

7 A. Ford was the first company of any size
8 that I worked for. So I'm going to say, yes, I did
9 believe them because I thought there was integrity
10 and sincerity there.

11 Q. Okay. What else do you remember from
12 the meeting out there -- or in a meeting,
13 announcement, whatever you want to call it?

14 A. Well, I found out that they said that
15 we were first in quality.

16 Q. Okay. Remember anything else?

17 A. Not -- not at this time.

18 Q. Okay. If anything comes up, then just
19 let me know.

20 A. Okay. That was a long time ago.

21 Q. Understood. My understanding would be
22 fourth quarter of '98. Does that sound about
23 right?

24 A. That's probably close.

1 Q. Okay. You made mention that you'd
2 also attended the meetings in the cafeteria?

3 A. Yes, sir.

4 Q. That's the meetings out in the plant
5 cafeteria out at the Batavia facility?

6 A. Yes, sir.

7 Q. Okay. How many meetings did you go to
8 out there?

9 A. I attended two separate meetings, but
10 I cannot tell you that I was in both of those
11 meetings one hundred percent of the time --

12 Q. Okay.

13 A. -- 'cause I -- you know, I am a
14 maintenance supervisor and I might have been late
15 or --

16 Q. Sure.

17 A. -- got called out or whatever. But I
18 did go to both meetings.

19 Q. If you can, do you remember the dates
20 for these meetings?

21 A. Not offhand. Couldn't even remember
22 my hire date.

23 Q. Okay. With respect to these meetings,
24 were they both in the cafeteria -- and we're away

1 from the initial announcement, okay, and you --

2 A. Right.

3 Q. -- told me about that. You referenced
4 two other meetings. I know you don't remember the
5 date. Do you remember where they were or who was
6 there?

7 A. They were both in the cafeteria.

8 Q. Okay. Were they on the same day?

9 A. No.

10 Q. Okay. Because -- well, what else can
11 you tell me from these meetings?

12 A. One of them was -- I'm not going to be
13 able to remember all of the people. We had Dave
14 Adams, Karl Kehr, I think Tony DeShaw, labor
15 relations, another labor relations guy. I think it
16 was Warren.

17 Q. Mike Warden?

18 A. Maybe it was Mike Warden. No, no.
19 I'm not sure. There was a another labor relations
20 guy there. I'm not a hundred percent sure who that
21 was.

22 Q. Okay.

23 A. But basically they had a PA system set
24 up, they had slides and they basically went through

1 the new plan or the new -- I guess offers or the
2 initial offers of what was going to happen to the
3 transitional employees 'cause at this point in
4 time, there's -- there's very few, if any, ZF
5 employees in the plant.

6 Q. Okay. Now, with this meeting in the
7 cafeteria with the slides, do you remember, were
8 there handouts?

9 A. I've seen handouts of it. I can't say
10 whether there was handouts -- did I pick up a
11 handout? That, I don't recall.

12 Q. Okay. And at this meeting in the
13 cafeteria, again, the one with the slides, do you
14 remember specifically what anybody said at that
15 meeting?

16 A. We were told that our salaries would
17 stay the same. We would be paid overtime. There
18 would be bonuses. The Ford pay grade thing would
19 not be -- where Ford had, I don't know. Rankings
20 one through 16 or whatever it is, pay grades. ZF
21 was basically going to have three. Showed some
22 kind of a little thing there, where they just
23 combined people into different roles. That's all I
24 can think of right now.

1 Q. Okay.

2 A. Well, they -- I'm sorry. They did
3 review our -- our medical plans would -- would be
4 covered under whoever it was at the time. They
5 announced -- they did say some things about our
6 pension and -- you know, that's about all I can
7 remember right now.

8 MR. VANWAY: John, lunch has arrived,
9 so whenever.

10 MR. HUNTER: We can -- yeah, I guess
11 before we get into too much further, let's go ahead
12 and take a break for lunch, okay?

13 (Off the record: 11:49 a.m. - 12:26 p.m.)

14 Q. All right. Mr. Pearce, we were just
15 getting into the discussions about meetings and
16 meetings that you attended and things like that. I
17 think you had told me that there were two separate
18 meetings that you attended.

19 We were talking about the first
20 meeting where you had the slides and Dave Adams,
21 Karl Kehr, Tony DeShaw and what you could remember
22 from that meeting. And, again, I believe you told
23 me about paid overtime, bonuses, medical plans and
24 pensions.

1 Over the lunch break, anything else
2 come to mind from that meeting?

3 A. No, didn't think about it.

4 Q. Okay. Now, that was one meeting. You
5 said two meetings. Do you remember any details
6 about your other meeting that you were at?

7 A. There's a good chance I got the
8 meetings mixed up, but the -- the best I can
9 recall, the first meeting was pretty much more of a
10 general thing. The second meeting was a little
11 more detail. And, again, the same kind of stuff
12 was reviewed.

13 You know, you will keep your same
14 salary, you will be paid for overtime, you will
15 have -- at one point in time, pensions were
16 explained in one of the two meetings, okay? And --
17 and I'm not going to say which 'cause I -- I really
18 just don't recall.

19 But the fixed pension that we had with
20 Ford versus the pension that ZF was going to come
21 up with, the income at the end -- at our retirement
22 date was, quote, unquote, presented as would be
23 "within a few dollars."

24 Of course, I guess it's arbitrary what

1 a few dollars is. So when I think a few dollars --
2 you know, I'd say less than \$100 a month
3 difference, so -- and I still don't understand
4 today how that's going to work. But that's how it
5 was explained.

6 Q. Okay. In terms of the timing of these
7 meetings, I'll call the one the slide meeting. Was
8 the slide meeting before or after this second
9 meeting that you've described?

10 A. I don't recall. Okay. The slide
11 meeting may have been the second one.

12 Q. Okay.

13 A. Yeah, I don't --

14 Q. Do you remember who was at -- at the
15 second meeting? I hate to use that term, but I
16 don't know what else to call it.

17 A. Well, one of the two meetings, there
18 was a lot more Ford representation, of which I have
19 no clue, as far as remembering their names --

20 Q. Okay.

21 A. -- okay? But you were more heavy Ford
22 related at one of the meetings than you were the
23 other.

24 Q. Okay. And, again -- and I'm calling

1 it the second meeting, not because we mean that
2 orally, but just --

3 A. Understand.

4 Q. At the second meeting, do you remember
5 anybody that was there?

6 A. Your -- your same core was there for
7 both. When I say "core," I'm talking the -- Dave
8 Adams was there. I'm drawing a blank. Karl was at
9 both. That's all I can recall.

10 Q. Okay. Do you remember any statements
11 that were made by either Mr. Kehr or Mr. Adams?

12 A. We were told at one of the two
13 meetings that there would be this panel or board or
14 whatever you guys want to refer to it as that would
15 look over the Ford transitional employees.

16 Q. Okay. Remember anything else about
17 these -- well, about this second meeting?

18 A. In one of the meetings, we were
19 advised that within the year, all the Ford people
20 that did not transition would be removed from the
21 plant.

22 Q. And what did that mean, "removed from
23 the plant"?

24 A. That they wouldn't -- if -- if they

1 did not accept the transitional offer, within a
2 year, there wasn't going to be any, quote, unquote,
3 "Ford people" within our facility, which is not
4 true. We still have Ford people and we're bringing
5 more Ford people back.

6 Q. Okay. And when you say they were
7 going to be removed, I mean, were they going to be
8 fired from Ford or --

9 A. No. Ford was going to attempt to
10 place them through their placement -- I don't know
11 what you would call it, procedure or whatever.

12 Q. Okay. So they'd be moved to another
13 Ford facility?

14 A. Yes.

15 Q. Okay. Anything else you can remember
16 from the second meeting?

17 A. Not at this time.

18 Q. Now, you had mentioned before the
19 break that you were going to receive paid overtime
20 and that was told to you at -- at least one of the
21 meetings. Do you remember that?

22 A. That was told to us at both meetings
23 and other times.

24 Q. Okay. Well, what other times was that

1 told to you?

2 A. When we were made our job offers, et
3 cetera. Also, one of the pamphlets that went
4 around that we had said that.

5 Q. Do you remember who made you your job
6 offer?

7 A. Yes, sir.

8 Q. Who was that?

9 A. Hassan Saleh.

10 Q. And so Hassan, at the time he made you
11 your job offer, what did he discuss with you?

12 A. That we were in the ground floor of
13 the CVT, in the joint venture, that our jobs were
14 as good or that our job was going to be as good, if
15 not better than we had with Ford, our benefits
16 weren't going to change.

17 Q. Okay. Did he tell you anything else
18 at that point?

19 A. Our chances for advancement were great
20 because, again, it was ground floor.

21 Q. And when Mr. Saleh made the job offer
22 to you, was it just yourself and Mr. Saleh or were
23 there others there or --

24 A. No, it was just Saleh and myself.

1 Q. And this discussion -- and I
2 interrupted you. You'd made the comment that
3 benefits wouldn't change, job as good as it was at
4 Ford, chances for advancement. Anything else in
5 that discussion?

6 A. I mean, more or less it was said, why
7 would any of us want to leave Ford if it's not
8 going to be as good if not better than we have?

9 Q. You understood that Batavia was
10 potentially slated to close, correct?

11 A. Batavia's been slated -- I've heard
12 rumors of Batavia and Sharonville closing for 10
13 years --

14 Q. Okay.

15 A. -- along with VanDyke, on and on.

16 Q. What about Fairfax?

17 A. Fairfax? Fairfax did close. How long
18 was it a rumor before it did close?

19 Q. All right. How long do you suppose
20 this discussion was that you had with Mr. Saleh
21 when he made you the job offer?

22 A. Probably less than 15 minutes.

23 Q. Okay. Did he present a written offer
24 to you at the time?

1 A. He presented two written offers to me.
2 It was two different occasions.

3 Q. Okay. And you ultimately accepted an
4 offer, correct?

5 A. Yes, sir.

6 Q. The -- on the paid overtime that we
7 kind of got off on a tangent here, but I had asked
8 you about what was told to you about overtime
9 and -- and you told me a little bit of it, about
10 what Mr. Saleh had said.

11 Again, what was your general
12 understanding as to how overtime was going to be
13 handled?

14 A. No different than Ford.

15 Q. And what does that mean?

16 A. It means if you work nine hours, you
17 get paid nine hours.

18 Q. I think you told me before, though,
19 that depended upon who your supervisor was?

20 A. That's true.

21 Q. Okay.

22 A. I do know people that worked -- got
23 paid in half-hour increments with Ford. But the
24 people I always worked for was in one-hour

1 blocks --

2 Q. Okay.

3 A. -- less a half hour for lunch, if we
4 want to get real specific.

5 Q. Do you have any other understanding
6 with respect to overtime?

7 A. I don't understand that one.

8 Q. Aside from the comment that it would
9 be no different than Ford, okay, was anything
10 else -- what else went into your understanding of
11 the overtime? That was it, that it's just no
12 different than Ford?

13 A. Yes.

14 Q. Okay. And I would gather, then, that
15 it is your opinion that the current ZF Batavia
16 overtime policy is different than it is at Ford?

17 A. It's definitely different.

18 Q. Okay. How is it different?

19 A. The current policy that we're working
20 under right now is you work -- you are expected to
21 work a nine and a half hour day, which includes
22 your lunch, daily.

23 Q. Okay. Did Ford pay for lunch?

24 A. No, I've never said paid lunch.

1 Q. Okay.

2 A. I was trying to be specific when I
3 said "nine hours." It's really nine and a half
4 'cause there's a half-hour lunch.

5 Q. Okay. So that wouldn't be different
6 at Ford in Batavia? If Ford didn't pay for lunch
7 and you have a half-hour lunch at Batavia, you
8 didn't get --

9 A. Lunch has got nothing to do with it.
10 I was just trying to --

11 Q. Oh, okay.

12 A. When I said "nine hours," if I worked
13 nine and a half, less a half hour for lunch at
14 Ford, I got paid an hour overtime. At Batavia, if
15 I work nine and a half hours, take off a half hour
16 for lunch, I get paid eight hours.

17 Q. Okay. Are there any other differences
18 in the overtime between those two, between Batavia
19 and Ford?

20 A. I never was refused overtime from Ford
21 Motor Company for hours worked.

22 Q. Okay. You got to help me. What does
23 that mean?

24 A. I worked at ZF Batavia for three

1 weekends, Saturday and Sunday, and received no
2 overtime.

3 Q. Do you remember when those weekends
4 were?

5 A. No, but I'm sure our timecards will
6 show it and they're probably year and a half, two
7 years ago.

8 Q. And was that scheduled overtime?

9 A. I was required to be there, therefore,
10 I assume it's scheduled overtime.

11 Q. Okay. And that was three Saturdays
12 and Sundays that you worked?

13 A. To the best of my memory, there was
14 three different weekends, yes.

15 Q. Okay. Six days?

16 A. I -- I'm pretty sure they're six dates
17 involved.

18 Q. Okay. Do you remember, were they
19 eights or twelves or --

20 A. No, sorry.

21 Q. Okay. And I had heard about that from
22 Mr. Whisman. If you know, was that the same time
23 frame where Mr. Whisman might have --

24 A. Yes.

1 Q. Okay. Who else worked, if you know,
2 during that time and was not paid for scheduled
3 overtime?

4 A. It would have been supervisors within
5 the maintenance organization because the production
6 organization supervisors was paid for the same
7 weekend.

8 Q. So it sounds -- it's a lot like Ford
9 in that it was up to the supervisors as to whether
10 or not you were going to be paid that weekend, just
11 as it was at Ford?

12 A. I won't agree with that 'cause I
13 was -- never at Ford did I work an eight-hour shift
14 and not receive pay or was asked to or told to.

15 Q. All right.

16 A. I was told to work weekends I didn't
17 want to work.

18 Q. Okay. Other than those three
19 weekends, any other time where you have not been
20 paid for scheduled overtime?

21 A. Daily.

22 Q. Okay.

23 A. Of Ford.

24 Q. Pardon me?

1 A. Of the Ford system versus the present
2 system.

3 Q. Yeah, and I apologize. It was a poor
4 question. At ZF Batavia, what other overtime have
5 you worked, but not been paid for?

6 A. Daily.

7 Q. Daily? In your answers to
8 interrogatories, I believe you set forth an amount
9 of \$19,780. Does that sound familiar?

10 A. Yes, sir.

11 Q. Is that -- what does that number
12 represent?

13 A. That is an estimate of what I think I
14 have lost, given the hour a day or hour and a half
15 a day, that is weekends of overtime that I worked
16 and did not receive pay for it.

17 Q. That would be the three weekends that
18 we talked about, right?

19 A. The best I can remember.

20 Q. Oh, sure.

21 A. I would have to go through time sheets
22 to verify all this.

23 Q. Okay.

24 A. So would you.

1 Q. Understood. I'm trying to
2 understand --

3 A. Okay.

4 Q. -- what that number is made of. So
5 there would be three weekends. I'm not sure how
6 many days, but those three weekends would be
7 included in that \$19,780 number?

8 A. Okay.

9 Q. Plus what, an hour every day that
10 you've worked at Batavia? Hour to an hour and a
11 half?

12 A. Or more.

13 Q. Well, at some point in time under the
14 Batavia policy, you do receive overtime
15 compensation?

16 A. At the 10 and a half hour, you get an
17 hour.

18 Q. Okay. Is there any other number or
19 basis for that number of \$19,780?

20 A. Well, in losing any of this, I'm sure
21 that affected my 401 'cause that's a straight
22 percentage that's drawn off the gross.

23 Q. Okay. Anything else that makes up
24 that number?

1 A. Not that I can think of right now.

2 Q. Okay. At some point in time -- well,
3 strike that.

4 When the offer was made to you by
5 Hassan, do you remember him giving you a document?

6 A. I had a document in my possession.

7 Q. So he didn't give it to you or --

8 A. That -- whether he gave it to me
9 outside the office, in the office or it was
10 attached, I can't remember. I had this in my
11 possession.

12 Q. Okay. When you say "this," you
13 referenced Exhibit Number 2. Let's see. Do this.
14 Let's mark that, please.

15 Mr. Pearce, I handed you what we've
16 marked for identification purposes as Exhibit 95.
17 If you would, please take a minute to go through
18 that.

19 A. Okay.

20 Q. Have you ever seen Exhibit 95 before?

21 A. Yes.

22 Q. And is that the hire letter that was
23 given to you by Mr. Saleh?

24 A. Yes.

1 Q. And is that your signature down there
2 at the bottom left?

3 A. Yes.

4 Q. And you'd mentioned before a
5 discussion that was no more than 15 minutes with
6 Mr. Saleh when he gave you the hire letter. Is
7 this the hire letter that he --

8 A. Yes.

9 Q. -- related to that meeting?

10 A. Yes.

11 Q. Did he give you any other documents at
12 that time?

13 A. I answered that before. I said I
14 couldn't recall -- recall. I had possession of
15 this. I do not know if it was attached to this
16 separately in my pocket or attached to the prior
17 letter.

18 Q. Okay.

19 MR. SIMON: For the record,
20 Mr. Hunter, when he said "this," he held up Exhibit
21 2. He then referred back to Exhibit 95.

22 Q. Just so that I'm clear, with respect
23 to Exhibit 2, prior to your signing the September
24 17th letter, Exhibit 95, had you, if you know, had

1 you received Exhibit 2?

2 MR. SIMON: Objection, asked and
3 answered. Go ahead.

4 A. I've already acknowledged that I've
5 seen this. I had possession of this.

6 Q. Okay. Prior to the September 17th
7 letter?

8 MR. SIMON: Objection, asked and
9 answered. Go ahead.

10 A. What's the -- I don't understand the
11 9/17 letter. Is that my prior offer? What are you
12 talking about?

13 Q. All right. Let's take a look at
14 Exhibit 95 --

15 A. Okay.

16 Q. -- okay? And let's use the date --

17 A. Oh, you're using the date up at the
18 top, okay.

19 Q. -- next to your signature.

20 A. Okay. I'm sorry. Now ask it again.

21 Q. 9/21/99, September 21st, '99, you
22 signed Exhibit 95, correct?

23 A. Yes.

24 Q. To the best of your knowledge, had you

1 received Exhibit 2 prior to the date you signed
2 Exhibit 95?

3 MR. SIMON: Objection, asked and
4 answered.

5 A. Do I know if I received it prior? I
6 had this.

7 Q. Okay.

8 A. I don't recall when I -- I don't know
9 if it was with this or I had got it with the prior
10 offer letter.

11 Q. Okay. All right. In the meeting
12 where you discussed Exhibit 95 with Mr. Saleh, did
13 you discuss Exhibit 2?

14 A. Yes. And, again, that's when the
15 statement was -- you know, it's as good, if -- if
16 not better than Ford.

17 Q. Okay. You had declined a prior offer
18 from ZF Batavia?

19 A. Yes, sir.

20 Q. Do you remember why you declined that
21 prior offer?

22 A. Yes, sir.

23 Q. And why was that?

24 A. Because Ford was a well known, large

1 company of which I had finally connected with and
2 had five years of service.

3 Q. I'm not sure I understand what you
4 mean by that.

5 A. Means I felt that I worked for a very,
6 very strong blue chip company --

7 Q. Okay.

8 A. -- and ZF was an unknown.

9 Q. Did you talk with anybody else about
10 the -- your decision to move to ZF Batavia?

11 A. Meaning officially, unofficially or
12 what?

13 Q. Either.

14 A. Well, I think most all the
15 transitional employees were talking among
16 themselves, trying -- you know, to figure out the
17 offer.

18 Q. Basically the group -- as a group.

19 A. Yes. There was a Dave Plageman who
20 was my direct supervisor at the time that, again,
21 said -- you know, and he was a Ford employee that
22 had transitioned, as good.

23 Q. Okay. And when you talk about
24 officially or unofficially, I think you used the

1 term we talked as a group unofficially?

2 A. When I say as a group, I don't mean we
3 all went into a room and talked.

4 Q. Sure.

5 A. I mean, if I was walking down the
6 aisle or something, Hey, Herb, Howard, what do you
7 think about this or what do you know about this?
8 That's what I'm referring to. And most of that
9 would have been one on one. It might be three. It
10 wouldn't be 30.

11 Q. Okay. Because these were the people
12 you had worked with for years --

13 A. Sure.

14 Q. -- and that's who you're going to
15 discuss this offer with, correct?

16 A. Yes.

17 Q. And certainly, in those discussions,
18 you didn't treat those discussions as promises from
19 Ford or ZF Batavia. It was simply a matter of
20 somebody else's opinion as to what -- what was on
21 the table, correct?

22 A. Their opinion?

23 Q. Mm-hmm.

24 A. I guess you could say that.

1 Q. Well, you didn't -- you certainly
2 might have relied on those discussions to make your
3 decision, correct?

4 A. They were considered, yes.

5 Q. Okay. But it isn't a matter that you
6 felt that those people that you discussed this with
7 had made you promises about what the future would
8 hold, correct?

9 A. I didn't enter a conversation with
10 them for that reason. That'd be like talking to my
11 equal over here, how's he going to promise me
12 anything?

13 Q. Right. I agree. All right. At what
14 point in time did you decide to accept the offer
15 from ZF Batavia?

16 A. On or around this date.

17 Q. And what changed your mind, because
18 obviously you'd declined the prior offer, you'd
19 already had the meetings, already received the gray
20 brochure, but decided not to join? So what changed
21 or what changed your mind?

22 A. Well, at the time, my father was in
23 the hospital with open heart surgery. I did not
24 need to be in a position where I had to relocate.

1 Q. Okay. And so the reason that you came
2 to Batavia is so that you did not have to relocate?

3 A. At that particular time, yes.

4 Q. Okay. Mr. Pearce, you've been handed
5 Exhibit 96. Would ask for you to review that
6 document, please.

7 A. Okay.

8 Q. And have you ever seen Exhibit 96
9 before, Mr. Pearce?

10 A. Yes.

11 Q. And on the second page of that
12 document, does that appear to be your signature
13 there, three places?

14 A. Yes, sir.

15 Q. That's all I need from that one. We
16 were talking before about what was represented to
17 you at the various meetings and whatnot. And you
18 had made comments about overtime. You also
19 mentioned bonuses. What was your understanding
20 about bonuses?

21 A. We were going to have bonuses related
22 to performance, et cetera, per our pamphlet.

23 Q. Per Exhibit Number 2?

24 A. Yes.

1 Q. Okay. And do you remember, again,
2 specifically what was said? And, sir, I'm not
3 asking you what was said in the pamphlet. In terms
4 of what was said --

5 A. Well, that was basically what was
6 said. You know, if the company performs and makes
7 a profit, per the pamphlet, okay, we will receive
8 some of that bonus.

9 Q. So your opinion is you were told you'd
10 be paid per the gray brochure, which is Exhibit
11 Number 2?

12 A. We were told that that is the way that
13 they will figure the bonus out, yes, sir --

14 Q. Okay.

15 A. -- and then divide it among the
16 employees.

17 Q. Okay. Were you ever told that you
18 were going to get a specific dollar amount?

19 A. No.

20 Q. Were you ever told that you were going
21 to get a specific percentage amount?

22 A. No.

23 Q. Do you believe you've been paid what
24 you're entitled to by ZF Batavia, in terms of your

1 bonus?

2 A. No.

3 Q. Okay. How much do you believe you're
4 entitled to from ZF Batavia?

5 A. I think I'm entitled to what's fair
6 and equitable with the rest of the plant.

7 Q. Okay.

8 A. One bonus was not paid to us. The
9 plant was put on critical plant status, which puts
10 the entire maintenance organization on 12 hours a
11 day, seven days a week for -- I don't know, close
12 to four months. You couldn't buy, beg, steal a day
13 off, okay? During that period, obviously we made a
14 sizable amount of money in overtime.

15 When the bonuses were issued, the
16 statement was made, Well, we're not giving you a
17 bonus because you made too much money in overtime.
18 But the people in the front office who weren't
19 required to work 12 hours a day, seven days a week,
20 they got a bonus.

21 So they got their time off, they
22 enjoyed their family, I didn't. But they got a
23 bonus 'cause they got to enjoy their family and
24 have time off. But I made too much money, so we

1 need to give it to them because they didn't make as
2 much, so yes.

3 Q. For what time period did you receive
4 no bonus?

5 A. That would be the year -- let's see.
6 I got one -- would be the year before last.

7 Q. So it would be for calendar year 2001?

8 A. Well, you're -- Herb can probably help
9 us with that on when bonuses are paid. We'll say
10 that, yeah. It's whatever year I didn't get one,
11 okay?

12 Q. Okay.

13 A. It's not that hard to figure out.

14 Q. There's only one year you didn't
15 receive an AIP --

16 A. Right.

17 Q. -- bonus, correct?

18 A. Yes.

19 Q. Okay. And other than that year, do
20 you feel you've been paid all the bonuses to which
21 you're entitled?

22 A. I don't think the bonuses have been
23 fair and equitable within the system --

24 Q. Okay.

1 A. -- within the ZF system.

2 Q. Okay. Why not?

3 A. That, I can't answer. You're asking
4 me why not. I mean, if -- within the Ford system,
5 even though at one point in time, they changed
6 their name and the way they calculated it, if it
7 was four and a half percent on gross or four and a
8 half percent on net -- you know, it was four and a
9 half percent for everybody that was there. That
10 was the bonus --

11 Q. Okay.

12 A. -- okay? It wasn't that you worked in
13 the accounting department or you worked in labor
14 relations or you worked in production or you worked
15 in maintenance. It was consistent and that was
16 fair.

17 Q. And when you say "it was consistent,"
18 you're saying --

19 A. Or equitable.

20 Q. -- the four and a half percent --

21 A. "Equitable" would be a better word
22 than "consistent."

23 Q. Well, you told me that it -- that it
24 changed from time to time, but that everybody got

1 the same percentage, is what I thought you told me?

2 A. Yes.

3 Q. So it wasn't --

4 A. The workforce was treated equitable,
5 fairly.

6 Q. If somebody is doing the same job as
7 you are doing --

8 A. Mm-hmm.

9 Q. -- okay? And they're paid the same
10 actual dollars that you are paid for doing the same
11 job, in terms of a bonus, you're telling me that's
12 not fair?

13 A. No, that is fair.

14 Q. Okay. Any other bonus dollars to
15 which you believe you're entitled?

16 A. I can't think of one right now.

17 Q. You also made mention of medical
18 plans. There were representations made to you
19 about medical plans. Do you believe that ZF
20 Batavia has followed through on whatever those
21 representations were?

22 A. The medical plan part?

23 Q. Mm-hmm.

24 A. I think that's what was presented,

1 within reason, yes.

2 Q. Okay. You also made a comment about
3 pension plans. Has ZF Batavia followed through
4 with respect to the pension plans?

5 A. That's yet to be seen.

6 Q. Okay. Do you have any information at
7 this point that would lead you to believe that ZF
8 Batavia has not followed through on the pension
9 plans?

10 A. Official information, no.

11 Q. I'll take unofficial.

12 A. Well, with the stock market the way it
13 is, I don't know how a fixed pension plan is going
14 to compete with one that was depending on the stock
15 market.

16 Q. Okay.

17 A. So that's what we're looking for, the
18 few dollars -- within a few dollars, you know. But
19 that's 12 more years away for me.

20 Q. Okay.

21 A. How do I answer that today?

22 Q. I understand where you're at. All
23 right. Any other representation --

24 A. Or will they even -- either one of

1 them remember me 12 years from now?

2 Q. Are there any other representations
3 that you recall being made about the pension plan?

4 A. Yes. I would receive medical benefits
5 from the Ford system.

6 Q. Okay.

7 A. I would receive the A Plan.

8 Q. Okay.

9 A. I would receive life insurance.
10 That's all I can recall from memory.

11 Q. Okay. Are there any other
12 representations that you feel were made by ZF
13 Batavia or Ford relative to your transition that
14 have not been followed through upon?

15 MR. SIMON: Can you list the ones
16 you've already covered?

17 MR. HUNTER: Sure. Clearly we've
18 covered overtime, bonuses, medical plans, pensions.
19 And, so far, that's all we've talked about.

20 A. We -- again, we were told that we
21 had -- you know, great opportunities with the joint
22 venture, being on the ground floor of CVT.

23 Q. Okay. And you feel that Batavia -- ZF
24 Batavia hasn't lived up to that?

1 A. No, I don't.

2 Q. And what has ZF Batavia failed to do?

3 A. If we were to be in on the ground
4 floor, we should have already been there trying to
5 help launch that. Even if you go back to my offer
6 letter, my offer letter really doesn't say
7 maintenance supervisor. It says quality. I asked
8 about that once and they said, Well, it doesn't
9 really matter. You're maintenance.

10 Q. Well, what were you hired in as?

11 A. Maintenance supervisor.

12 Q. For what department?

13 A. The existing department that I'm in,
14 but my offer letter doesn't say that. Says group
15 leader for the manufacturing-quality department.
16 We're not a quality department. I'm maintenance
17 department.

18 Q. Okay. All right. Let's talk about
19 that for a second. So you were never in the
20 manufacturing-quality department?

21 A. No, sir.

22 Q. Okay. Did you ever say anything to
23 anybody that, hey --

24 A. Oh, yeah. I asked once. I said, Why

1 don't I have the same job as Tom Bitner? And they
2 said, Well, it doesn't mean anything. You're a
3 maintenance guy. That's the end of that.

4 Q. Okay. Did you ever say, well, I don't
5 want to work in the maintenance department?

6 A. No, I need a job.

7 Q. Okay. And you knew Hassan was the
8 maintenance guy, correct?

9 A. Hassan was the one that made the
10 offer, yes.

11 Q. And he was a maintenance guy?

12 A. And he was a maintenance guy, yes.

13 Q. And your history at Ford had been in
14 maintenance?

15 A. Yes.

16 Q. Okay.

17 A. So was Tom Bitner's.

18 Q. And so do you think that somebody
19 mislead you or are you telling me there was a
20 mistake or --

21 A. I asked about it because it was the
22 exact wording that Tom Bitner had in his offer and
23 he was in the quality organization. And I said,
24 Cool. Maybe I can get out of maintenance.

1 Q. Okay. And anything else that Batavia
2 hasn't -- ZF Batavia hasn't followed through on
3 with respect to your transition?

4 A. I'm not a hundred percent sure I
5 understand the question. I mean, are we -- is this
6 where I'm supposed to -- not supposed to, but is
7 this where vacation times were affected?

8 Q. Okay.

9 A. Okay. Personal days were affected.
10 Obviously we've talked about the overtime that was
11 affected.

12 Q. What was told to you --

13 A. Bereavement leaves were affected.

14 Q. What was told to you regarding
15 vacation?

16 A. At one point in time, we -- I had to
17 threaten my direct supervisor to buy a week's
18 vacation. He wasn't going to allow it, but it's --
19 you know, it's in our agreement and the other part
20 of the plants were doing it.

21 Q. I guess I'm going to ask, you mean you
22 physically threatened him?

23 A. No. I just said, You know, we're
24 going to have to go to labor relations on this one.

1 Q. Okay.

2 A. You can't let some -- some people by
3 and some people not. Again, let's be fair and
4 equitable. That's really what we're asking.

5 Q. Well, and when you say --

6 A. Or what I'm asking. I'll rephrase
7 that.

8 Q. Okay.

9 A. It's what I'm asking. All I want to
10 do is be treated fairly.

11 Q. Treated fairly, would that mean
12 treated like everybody else at ZF Batavia?

13 A. Within the group, in the organization
14 I'm in, I want to be treated fairly. That's all.

15 Q. Okay. With respect to the vacation,
16 again, I guess, what representations do you recall
17 being made about vacation?

18 A. Some of the people in the group were
19 eligible for another week. That doesn't really
20 apply to me. So that would probably be where that
21 statement come from.

22 Q. Well,

23 A. I do know --

24 Q. Do you remember at a meeting, did

1 somebody say something or -- you know, I guess I
2 don't understand. Where did you develop your
3 understanding about what the vacation policy would
4 be?

5 A. My understanding is right now, some of
6 the people in the plant get their fifth week of
7 vacation. Get four weeks vacation and buy a fifth.
8 Some people in the plant that are eligible for four
9 weeks of vacation don't get it.

10 Q. And what makes them eligible --

11 A. As far as vacation-wise, I get
12 what's -- I'm eligible for.

13 Q. And what you thought you were going to
14 get?

15 A. And what I thought I was going to get.

16 Q. And what you thought you were going to
17 get, is that what's set forth in Exhibit 2, or did
18 you have a different understanding?

19 A. Yes. And I'm aware of this and this
20 is different than Ford's and I knew that.

21 Q. Okay.

22 A. That's okay.

23 Q. All right. You also mentioned
24 personal days. What was your --

1 A. Yes, sir.

2 Q. What was your understanding as to what
3 you were going to receive?

4 A. We were presented five -- originally
5 five personal days, and then two of those were
6 removed as time went on --

7 Q. Okay.

8 A. -- and then given back.

9 Q. Okay. And if I'm not mistaken, the
10 personal days were shortened for a period of about
11 a year?

12 A. Year and a half or so, yeah.

13 Q. All right. Did you require more than
14 three personal days at any given time?

15 A. Well, sure.

16 Q. Okay. So you would have used the
17 additional two personal days?

18 A. I'm sure I would have.

19 Q. You have an illness or what?

20 A. I have to go see a doctor. I mean,
21 that's what they're for.

22 Q. Okay.

23 A. Please realize that I work in a
24 maintenance organization and we work seven days a

1 week and we work long hours. So to get to the
2 doctor, you have to get out of there.

3 Q. Okay.

4 A. They don't reschedule around me.

5 Q. And you also mentioned bereavement.
6 What's the issue with bereavement?

7 A. Direct family was three days, and like
8 I lost a mother-in-law during this time. And that,
9 under Ford, would have been three days. It was one
10 day.

11 Q. Okay.

12 A. So there's my two personal days to be
13 with my wife on bereavement.

14 Q. Okay. All right. Anything else that
15 you feel wasn't delivered to you?

16 A. I can't think of anything right now.

17 Q. You had made mention that you received
18 Exhibit Number 2 -- I guess it's a little unclear
19 when, but that you received it at some point,
20 correct?

21 A. Yes.

22 Q. And you reviewed the document?

23 A. Yes.

24 Q. You saw the language in there about

1 subject to change?

2 A. Yes.

3 Q. And you understood, then, that the
4 items listed in this document were subject to
5 change?

6 A. No.

7 Q. Why not?

8 A. Not all items are subject to change.

9 Q. Why wouldn't they be?

10 A. I was told some things were not going
11 to change. Obviously --

12 Q. Well, who told you that?

13 MR. SIMON: Let him finish his answer.

14 A. Obviously when you work at a company,
15 you see your medical plans and your dental plans
16 and these kind of things change.

17 Q. Okay.

18 A. All right. You see -- we'll even go
19 so far to say incentive plans would change, meaning
20 percentages go up and down, okay? That part of it,
21 I don't have an issue with, okay? That was where
22 I'm going to the fair and equitable, okay? Nobody
23 gets one, that's fine. I don't get one, either.
24 But you don't get 20 percent and I get none, okay?

1 I -- I did not believe nor would I
2 went on with Ford if I thought they were going --
3 not Ford, ZF -- you know, to cut vacations and cut
4 hourly rates and stop paying overtime. They can
5 stop paying overtime by hiring more people. That's
6 the decision the company makes, not me.

7 Q. But, again, the language clearly in
8 the gray brochure says that those things are
9 subject to change. And you had made a comment
10 somebody told me -- and I meant to try to ask you
11 who. I want to come back to that. But who told
12 you things wouldn't change?

13 A. In the meetings that we had up front.
14 I mean, they sat there and told us, This is the way
15 it's going to be. So when you read this and put it
16 with the information that was -- which wasn't
17 written, I'll give you that. This is a written
18 document, that the meetings that we had -- you
19 know, you're looking at this and you see that
20 statement, you're not thinking of salary and
21 overtime 'cause that's already there. They've
22 already said, Hey, it's the same as it was.

23 Q. Which it changed at Ford, though?

24 A. Please?

1 Q. Your salary and overtime changed when
2 you were at Ford?

3 A. It did?

4 Q. You never got a pay increase at Ford?

5 A. I got a pay increase.

6 Q. So it changed?

7 A. If you call that change. I didn't get
8 a reduction.

9 Q. You haven't had a reduction at
10 Batavia, either, have you?

11 A. I've lost overtime. That's a
12 reduction.

13 Q. But that's not your salary, is it?

14 A. That's not my salary, no. But they
15 also told me in this pamphlet that I would be paid
16 overtime and they didn't pay me overtime.

17 Q. Okay. But it also says that the items
18 listed in here are subject to change as well,
19 correct?

20 A. They said I'd be paid a bonus and they
21 didn't give me a bonus and they gave somebody else
22 a bonus. How does this document apply to that?

23 Q. Okay. But the question I asked you
24 was, the document says the items listed in

1 document -- Exhibit 2 are subject to change,
2 correct?

3 MR. SIMON: Objection. Document
4 speaks for itself. He's referring to a certain
5 sentence there. Go ahead and answer.

6 A. There is a statement on the document
7 that says that, yes.

8 Q. And you read that document?

9 A. Yes.

10 Q. All right. And your statement, I
11 believe, was that representatives said things would
12 be as it was at Ford, but not that things wouldn't
13 change, correct?

14 A. I believe I said Hassan said things
15 would be as good, if not better than Ford --

16 Q. Okay.

17 A. -- is what I believe I said.

18 Q. Did anybody else besides Mr. Saleh
19 ever make that comment?

20 A. Through -- directly to me, no.

21 Q. Okay.

22 A. I'll recall that. Dave Plageman
23 would -- would have said the same -- the same thing
24 to me.

1 Q. I'm sorry. Dave --

2 A. Dave Plageman. He was my direct boss
3 at the time.

4 MR. SIMON: For the record, he had
5 already testified that Dave Plageman had said that,
6 but that's all right.

7 Q. Was that at one of those
8 information -- or unofficial discussions that you
9 described earlier?

10 A. Yeah, that would be just a
11 conversation between him and I.

12 Q. Okay. You received a transition
13 bonus, didn't you?

14 A. Yes, sir.

15 Q. And that was \$25,000?

16 A. Whatever the letter says, yes, sir.

17 Q. Do you know what that was paid for?

18 A. That was paid for future losses of --
19 the way I understood it -- like my A Plan, okay? I
20 got 20-something years before I can go back and use
21 an A Plan. That's not available to me till I
22 retire.

23 Q. Okay.

24 A. I hope everybody remembers this when I

1 retire, all right? That was for those kind of
2 things.

3 Q. It was for the differences between
4 what was made available --

5 A. A few --

6 Q. -- to you?

7 A. -- differences that people were aware
8 of and that's what that was. It was also to help
9 entice us to -- you know, to sign with ZF.

10 Q. Okay. Is there anything else that you
11 believe you are entitled to receive from ZF Batavia
12 that we haven't already talked about already today?

13 A. Monetarily, is that what we're
14 talking?

15 Q. Monetarily or otherwise.

16 A. Going off of memory, monetarily, I'd
17 say that we've probably got it covered within --
18 without doing detailed records. I still want -- I
19 want fairness within the organization.

20 Q. Would you agree with me that fairness
21 is a bit of a personal or subjective measure?

22 A. Oh, definitely. That's why it exists.

23 MR. HUNTER: Okay. Well, I will turn
24 the chair over to Mr. VanWay, as it's about 1:30.

1 I'm not complete yet, but give Mr. VanWay an
2 opportunity here.

3 (1:19 p.m.)

4 EXAMINATION

5 BY MR. VANWAY

6 Q. Afternoon, Mr. Pearce.

7 A. Hi.

8 Q. I don't recall that we've met before.

9 A. Don't believe we have. I think you're
10 safe this time.

11 Q. Trying to be more careful with that.
12 I'm Jeff VanWay. I represent Ford in this case. I
13 have a few questions for you today. I'll try not
14 to repeat what Mr. Hunter has already asked you.

15 Mr. Pearce, in the six years that you
16 were working at Ford, you were always a salaried
17 employee, right?

18 A. That's correct.

19 Q. Never in the UAW?

20 A. Correct.

21 Q. Okay. And you understood that there
22 was a difference between employees in the UAW and
23 salaried employees?

24 A. Yes.

1 Q. UAW employees had a labor contract
2 that set forth their wages and benefits, correct?

3 A. Yes.

4 Q. And you didn't have an agreement like
5 that with Ford, did you?

6 A. Do I have a contract?

7 Q. Right.

8 A. No.

9 Q. Are you familiar with the term "at-
10 will employee"? Have you ever heard that before?

11 A. I've heard that before, yes.

12 Q. Is it your understanding that while
13 you were at Ford, you were an at-will employee?

14 A. Not really.

15 Q. What did you think your status was
16 while you were with Ford?

17 A. What do you mean? Could I be
18 terminated or --

19 Q. Well, did you think the company could,
20 in fact, terminate you --

21 A. Sure.

22 Q. -- at any time?

23 A. Sure.

24 Q. Okay.

1 A. For just -- for just cause and under a
2 due process.

3 Q. Under a due process, did you have a
4 right to file a grievance? Was that your
5 understanding?

6 A. No.

7 Q. You say "for just cause." You don't
8 believe that Ford could have come in and said for
9 no reason at all, Mr. Pearce, you're not going to
10 work here anymore?

11 A. No.

12 Q. And did someone tell you that you
13 couldn't be fired other than for just cause?

14 A. Did someone tell me that, no, sir.

15 Q. Then how did you come to that belief,
16 that that's how things were at Ford?

17 A. That's the way I believe all companies
18 are.

19 MR. VANWAY: Okay. Can we mark this
20 as 97, I think?

21 Q. Mr. Pearce, you've been handed what
22 we've marked as Exhibit 97, which I'll submit to
23 you came from your personnel file at Ford. The
24 first question, is that your signature that appears

1 at the bottom left of that document?

2 A. Yes, sir.

3 Q. Okay. You signed this while you
4 worked at Ford; is that right?

5 A. Well, I would have to assume so. With
6 no date on there to verify that I did, I don't
7 know.

8 Q. I understand. You don't dispute that
9 this is the document that you signed while you were
10 employed with Ford, do you?

11 A. I was employed with someone that Ann
12 Jones worked for, which could have been ZF or Ford.

13 Q. Okay. Well, if you look in the first
14 paragraph --

15 A. Mm-hmm.

16 Q. -- looks like the fifth line down.
17 There's reference. I'm sorry. Fourth line down,
18 there's a reference to Ford Motor Company. Does
19 that help --

20 A. Okay.

21 Q. -- clear up whether this was something
22 that you signed while you worked for Ford?

23 A. All right.

24 Q. Okay. Do you see the third paragraph

1 in on this agreement, starting with, I understand
2 my employment is not for any definite term?

3 A. Okay.

4 Q. Can you take just a minute to read
5 that to yourself and let me know when you've done
6 so?

7 A. Yes.

8 Q. Does that paragraph accurately
9 describe your understanding of what your employment
10 relationship was like at Ford?

11 A. Yes, but the way I really read this
12 is, it's like a layoff or something. I don't know
13 what you're asking me.

14 Q. I'm just asking you, is that your
15 understanding of how things were at Ford?

16 A. Sure.

17 Q. Okay. And do you see towards the end
18 of that paragraph, the second-to-the-last line of
19 the paragraph, there's a clause that says, "My pay
20 and benefits to such adjustments as my employer may
21 from time to time determine." Do you see that part
22 that I'm reading?

23 A. Yes.

24 Q. You'd agree with me, wouldn't you,

1 that your pay and benefits at Ford were subject to
2 the company's discretion?

3 A. Pay and benefits subject to company
4 discretion?

5 Q. Let me ask it a better way. You
6 understood that it was the company that determined
7 what your pay was going to be?

8 A. Within a pay range, yes, sir.

9 Q. Okay. You understood that the company
10 had the right to make changes to that pay range --

11 A. Yes.

12 Q. -- without consulting you?

13 A. Me, personally?

14 Q. Yes.

15 A. No.

16 Q. And it wasn't your understanding that
17 they had to come down and get your permission
18 before they made a change?

19 A. Be nice if they would, but no.

20 Q. I understand. Same question with
21 respect to your benefits. Did you understand that
22 the company had the right to make changes to your
23 benefits without coming down and asking you?

24 A. Do they have the right? I think I

1 have an agreement with Ford Motor Company and also
2 ZF that I had accepted a job under certain terms
3 and conditions.

4 I -- do things have to change, yes.
5 Does management have to change with that and make
6 decisions that may affect rates of pay and stuff,
7 yes. Is there -- now what are the implications of
8 that? I mean, if Ford Motor Company came out and
9 said I'm reducing everybody \$50,000 a year, do they
10 have the right to do that, yes. But they'd never
11 build another car, so I don't --

12 Q. No, I understand. I understand your
13 testimony.

14 A. For me to say, yes, they have the
15 right to do, well, yeah, they have the right to do
16 it, but there's an ethical way to do it.

17 Q. Okay. I understand your testimony.
18 That's fine. When you first started with Ford, I
19 think you said that was '93. That was some lean
20 years. That's around a lean period of time for
21 Ford, wasn't it?

22 A. I don't know. It was a godsend to me,
23 so --

24 Q. Okay. Do you remember that first

1 year, 1993? Do you remember receiving a profit
2 sharing bonus that year?

3 A. Yeah.

4 Q. In 1993 or in 1994?

5 A. I remember working -- my first year at
6 Ford when everybody -- people were getting profit
7 sharing checks and I had only been there three
8 months or something, when these -- that would
9 pertain to that period of time. And I actually got
10 a bonus from Ford Motor Company from my boss at the
11 time. And it wasn't a large bonus, but he said,
12 Here. You were here for a little while. We wanted
13 to give you a little something.

14 Q. Was it the same percentage that
15 everybody else got?

16 A. Oh, no. No, it wouldn't have been.
17 Why should it be? I wasn't there all year.

18 Q. Well, I understand. I thought your
19 testimony earlier was that people got maybe
20 different amounts, but the percentage was always
21 the same?

22 A. The next year, the percentage was all
23 the same for all of us. I guess I'm trying to say
24 it probably would have been prorated or something.

1 Maybe the percentage was the same amount, I don't
2 know.

3 Q. Okay. Fair enough.

4 A. Could have been. I don't know
5 whether --

6 Q. I'm sorry. I didn't mean to cut you
7 off. Do you have Exhibit 4 in front of you or,
8 Steve, could you show him Exhibit 4?

9 Exhibit 4, if you look at the first
10 page, in fact, it's been produced in this case,
11 which I think there's been testimony that these are
12 various slides and things that were shown at the
13 May 27th, 1999 meeting. And if you flip to page 18
14 of this document, there's a chart there that says
15 Ford historical profit sharing. And then there are
16 three years, '91, '92, '93 where it shows that zero
17 percent was paid out in profit sharing.

18 Does that change your testimony at all
19 as to whether or not you received any profit
20 sharing that first year you were with Ford or first
21 few months you were with Ford?

22 A. When did I hire on? What was my date?

23 MR. SIMON: You testified you were
24 hired in '93.

1 A. No 'cause they paid a small percentage
2 in '93. The first year I was there, I got a --

3 Q. Okay.

4 A. -- bonus of some sort.

5 Q. I think you said you hired in in
6 September of '93. So would it have been on into
7 '94 before you actually received the profit --

8 A. It could have been.

9 Q. Okay. I think that clears it up.
10 Thank you. While you were still with Ford before
11 you went to ZF Batavia, do you recall Ford making a
12 change in the profit sharing, changing from a
13 profit sharing plan to performance bonus?

14 A. They changed the manner in which it
15 was calculated and renamed it, but the basic was
16 the same.

17 Q. Was the change to where instead of
18 under profit sharing where it had been more company
19 profit driven, that the performance bonus was now,
20 in part, how an individual did, that your
21 percentage may have varied based on how you, as an
22 individual, performed?

23 A. I don't remember that.

24 Q. What's the change that you remember

1 being made?

2 A. The change I remember was, there was
3 actually -- what words would I use to tell you? I
4 think in prior years, Ford would say I've got this
5 much money that I'm going to put into the profit
6 sharing and then they would divide that by their
7 employees and figure out some kind of percentage
8 and everybody got the same.

9 Q. Okay.

10 A. When they changed the plan, it was,
11 okay. We're going to have so much in profit.
12 We're going to put so much in this plan, if we make
13 three percent after taxes. We're going to put so
14 much more in it if we make four percent after tax.
15 We're going to put so much more in it if we make
16 five percent after tax. That's the way I remember
17 the plan.

18 Q. Okay. But it was your understanding
19 that everyone would still get the same percentage?

20 A. It would be -- there was a formula
21 that they used to keep that what I considered fair
22 and equitable.

23 Q. When you say everyone would get the
24 same percentage, are you talking about everyone

1 within your classification or are you talking about
2 everyone company-wide?

3 A. I'd say everyone within my pay grade.
4 I mean, I'm sure managers and -- and et cetera get
5 a different one and stock bonuses and everything
6 else. But, I mean, within -- the same people
7 within the same organization doing the same job
8 would get the same amount of money.

9 Q. "Within the same organization," now
10 you referred earlier to just front office people.
11 They're not within the same organization as you
12 are, are they?

13 A. Evidently not at ZF. At Ford, they
14 would be.

15 Q. At Ford, they were in the same
16 organization?

17 A. If they were in the same pay grade.

18 Q. Okay. Well, what do you mean by "same
19 organization"? Is that the same department, the
20 same plant? What do you mean by that?

21 A. If I was a maintenance supervisor in
22 the Ford system at Sharonville and I was a
23 maintenance super -- in the pay grade seven or pay
24 grade eight and at Batavia, I was a pay grade eight

1 maintenance supervisor for Ford at Batavia, when
2 the bonuses were calculated, each of those
3 positions would receive the same percentage amount
4 of the bonus.

5 Now, would the bonuses be identical,
6 no, because this guy may have longevity on me. He
7 may be making more money. He may have worked more
8 overtime, et cetera. But the base percentage would
9 be the same for both people doing the same job
10 within the same organization. That's what I'm
11 trying to say.

12 Q. Okay.

13 A. I don't know if I'm clarifying this
14 very well or not.

15 Q. Well, let me see if I understand
16 something. You would compare yourself, for
17 example, to someone who was in the same pay grade
18 within another transmission plant for Ford?

19 A. No. I wouldn't even go to a
20 transmission plant. I wouldn't go.

21 Q. Any other plant?

22 A. Same pay grade level in the Ford
23 system.

24 Q. Okay. Now, do you know what the --

1 well, what's your pay grade at ZF Batavia?

2 A. Well, we don't have pay grades
3 anymore.

4 Q. Well, what's your classification?

5 A. It would be equivalent -- I guess it
6 would be a nine now under the Ford system.

7 Q. What's the name of your
8 classification?

9 A. I don't know. I'm not management
10 level, so what's the next one under?

11 MR. SIMON: He's not going to answer.

12 A. You'll have to help me.

13 Q. Give me your best.

14 MR. SIMON: A lot of people here know
15 stuff, but they can't answer.

16 A. I -- I can't -- I don't know what it
17 is.

18 Q. Okay. So your understanding, then, is
19 that to be paid at ZF Batavia consistent with how
20 you were at Ford, then, whoever is in your same
21 classification at ZF Batavia should get the same as
22 what you've got. Am I understanding your
23 testimony --

24 A. I'm in a --

1 Q. -- correctly?

2 A. -- GSR band.

3 Q. Okay. And within the GSR band, are
4 there different levels?

5 A. Are there different levels?

6 Q. Right.

7 A. I can't answer that. I don't know.

8 Q. Well, is it your understanding
9 everyone that's in the GSR band gets the same
10 thing?

11 A. No, they don't.

12 Q. Okay. And so is it your
13 understanding, then, or is it your claim that with
14 respect to your bonus, you should have received the
15 same as what everybody else in the GSR band
16 received?

17 A. With Ford?

18 Q. With ZF Batavia.

19 A. With ZF Batavia, yes.

20 Q. Okay. And how much more did people in
21 the GSR band at ZF Batavia receive than you did in
22 their bonus for the year in dispute?

23 A. Thousands of percent.

24 Q. Do you know how much?

1 A. No. I got zero. So if they got
2 anything, it's more than mine.

3 Q. Do you know if they got anything?

4 A. Yes.

5 Q. And you referred to front office
6 people before. Are those people that are in the
7 GSR band?

8 A. Some of them are.

9 Q. But they don't do the same job that
10 you do, right?

11 A. No.

12 Q. I mean, earlier at Ford, you were
13 comparing yourself to someone else that was doing
14 the maintenance job. Wouldn't that be the same
15 comparison that ZF Batavia, then, your bonus to
16 what another maintenance --

17 A. Yes, but we had some --

18 Q. -- supervisors did?

19 A. We had some maintenance guys get
20 bonus.

21 Q. Okay. And were those transition
22 employees --

23 A. Yes.

24 Q. -- or were those new hires?

1 A. Both.

2 Q. Okay. So do you know how much more
3 one of those other maintenance individuals got than
4 you did?

5 A. Dollar amount?

6 Q. Yeah.

7 A. No, sir.

8 Q. Do you know what their percentage --
9 what percentage --

10 A. No, sir.

11 Q. -- bonus they received? Mr. Pearce,
12 you have in front of you Exhibit 98, which is a
13 two-page document that Ford produced in this case.
14 Appears to be the application for salaried
15 employment that you filled out with Ford back in
16 1993. Do you agree with me that's what this
17 document is?

18 A. Yes.

19 MR. SIMON: Off the record for a
20 second.

21 MR. VANWAY: Sure.

22 (Off the record: 1:36 p.m. - 1:44 p.m.)

23 Q. Mr. Pearce, I think before we took our
24 break, I had just asked you about Exhibit 98, I

1 believe. And I think you had just agreed with me
2 that that was your application for employment that
3 you completed with Ford; is that correct?

4 A. Correct.

5 Q. Is that your handwriting on this
6 document?

7 A. Yes.

8 Q. And on the second page, is that your
9 signature that appears --

10 A. Yes.

11 Q. I'm going to direct your attention to
12 the paragraph that appears right before your
13 signature on the second page, starting about almost
14 in the middle of that paragraph, there's a sentence
15 that says, I understand my employment is not to be
16 for any definite term. Do you see where I'm at?

17 A. Yes.

18 Q. Towards the end of that sentence, it
19 says, The only way any differing commitment
20 regarding my employment may be made is by a written
21 agreement signed by the vice president of the
22 company in charge of employee relations. Do you
23 see where I'm at? Still on that same paragraph.
24 In fact, I think it's the same sentence.

1 A. Yes.

2 Q. Did you, while you were at Ford, ever
3 have a written agreement signed by the vice
4 president of the company in charge of employee
5 relations?

6 A. (Witness nodded.)

7 Q. I just need you to answer --

8 A. No.

9 Q. -- out loud.

10 A. No.

11 Q. Thank you. You still have your ZF
12 Batavia application in front of you, Exhibit 96, I
13 believe? If you could, flip to the second page of
14 that document as well. Your signature appears
15 three times. In the section above the first part
16 where your signature appears, there's a paragraph
17 in the middle there, which says similar to what the
18 language in the Ford application you just read, it
19 says, The only way any differing commitment
20 regarding my employment may be made is by written
21 agreement signed by the director of human resources
22 of the company.

23 Same question. Did you ever have a
24 written agreement signed by the director of human

1 resources of ZF Batavia?

2 A. No.

3 Q. I know you testified, Mr. Pearce,
4 about -- you received basically, I guess, two
5 offers of employment from ZF Batavia. First one
6 you declined; second one you accepted?

7 A. Yes.

8 Q. Do you remember on the first offer, do
9 you remember who signed that? Was it Hassan?

10 A. Hassan made both offers.

11 Q. And did you -- do you remember signing
12 to decline the first offer?

13 A. No, I did not.

14 Q. Okay. All right. I don't have copies
15 of this, so we can make copies if we need it. It's
16 a document I received from your lawyers and it's
17 Bates stamped end 05. Can you take a moment and
18 look at that and can you tell me, is that the first
19 offer letter that you received?

20 A. I would assume possibly -- it probably
21 is. Would be the only way -- I mean, how do I know
22 for sure that it is, but comparing the two, I would
23 say yes.

24 Q. Well, and the reason I ask, I haven't

1 received any other documents that purport to be
2 that first offer letter and I'm just wondering if
3 you may have it or if that's it?

4 A. No. I would say this is it.

5 Q. If you could keep the two by side by
6 side for just a moment. And by "the two," I mean
7 the second offer letter, which has been marked as
8 Exhibit 95, and the first offer letter, which we
9 haven't marked, but it's Bates stamped 005.

10 There's a substantial -- well, there's
11 a salary increase between the first offer and the
12 second offer, right?

13 A. Yes.

14 Q. They offered you more money after you
15 declined the offer, the first offer?

16 A. Yes.

17 Q. And you accepted the second offer, but
18 declined the first one?

19 A. Yes.

20 Q. And Exhibit 2, which I know -- which
21 is the tri-fold brochure, which you've testified
22 about at some length already. Do you recall
23 whether that was included with the first offer that
24 you received?

1 A. I'm going to go back to what I
2 originally said. When I signed this offer --

3 Q. You're pointing --

4 A. -- I had --

5 Q. You're pointing to 95?

6 A. When I -- yeah.

7 Q. Okay.

8 A. When I signed number 95, I had in my
9 possession Exhibit 2, okay? Whether it -- how I
10 had that, I can't answer.

11 Q. Okay. Fair enough. Now, you
12 testified earlier with regard to certain -- and
13 actually I'll take the unmarked one back.

14 MR. SIMON: Yeah.

15 Q. You testified regarding several
16 promises that you believe were made to you that are
17 at issue in this case. I want to make sure I just
18 have them all. I don't mean to repeat testimony.
19 I just want to make sure I've got them all.

20 You said overtime; you said bonuses;
21 CVT; vacation; personal and bereavement. That's --
22 I count six. Any other promises, representations
23 that you believe that were made to you that weren't
24 followed through with?

1 A. I'm -- when we clarify CVT, is that
2 the ground floor --

3 Q. Yes.

4 A. -- promotions --

5 Q. Yes, sir.

6 A. -- you know?

7 Q. That's what I meant by "CVT."

8 A. I can't think of any other at this
9 time.

10 Q. With respect to overtime -- and you've
11 testified, I believe, about the change in the
12 overtime policy. With respect to daily overtime,
13 as well as the three weekends that you didn't
14 receive overtime, that's everything that is part of
15 your overtime claim, right?

16 A. Without verifying actual timecards,
17 yes.

18 Q. Okay. With respect -- let's start
19 first with the change in the way daily overtime is
20 being done at ZF Batavia, as opposed to how it was
21 done at Ford. Do you know who made that change?

22 A. It was announced to us in a -- I'll
23 rephrase that. Yes.

24 Q. Okay. Who made the change, then?

1 A. It was announced to us in a
2 face-to-face meeting by Len Sennish.

3 Q. Do you have any evidence or reason to
4 believe that someone from Ford was involved in that
5 change?

6 A. I can't imagine that the Ford
7 directors would not be aware that the company was
8 going to do something like that 'cause there had to
9 be an impact to the company. Whether it be a
10 financial savings, or whether it be a morale
11 problem, there had to be an impact to the company.

12 Q. When you say "the Ford directors," are
13 you talking about the three individuals who are on
14 ZF Batavia's board of directors that are Ford
15 employees?

16 A. We -- we were under the impression
17 that there were going to be Ford people on a board.
18 Whether that's a board of directors or a review
19 board or a employee relations board, I don't know
20 what the board was going to be. But there was
21 going to be some people there that was supposed to
22 kind of watch over the Ford transitional employees.

23 ZF needed the transitional employees
24 and Ford needed the transitional employees to make

1 this work 'cause Ford just as easily could have
2 shut down the plant.

3 Q. I understand. And there is, in fact,
4 a board of directors for ZF Batavia that has three
5 ZF members and three Ford members; is that correct?

6 A. I -- I can't answer that.

7 Q. If you know.

8 A. I don't know.

9 Q. Okay.

10 A. Should be, but I don't know.

11 Q. And when you say the "directors," you
12 think the directors must have known, are you
13 referring to the board of directors?

14 A. I don't believe the policy that would
15 affect the plant directly would not be known, at
16 least indirectly by the board of directors.

17 Q. Okay. And other than through the
18 board of directors, are you aware of whether Ford
19 had any involvement in the change in the overtime
20 policy?

21 A. I would have no way of knowing.

22 Q. With respect to the three weekends
23 that you weren't paid for, who made that decision,
24 do you know?

1 A. Do I know directly who made that
2 decision, no, no, sir. I would assume Dick Newark
3 and below.

4 Q. Okay. And do you have any reason to
5 believe that anyone from Ford was involved in that
6 decision not to pay you for those three weekends?

7 A. No, sir.

8 Q. You also testified about the AIP. And
9 one year you didn't receive an AIP at all, right?

10 A. That's correct.

11 Q. Every other year, you've received an
12 AIP. And, in fact, the AIP bonuses that you have
13 received since you've been at ZF Batavia, setting
14 aside the one year that you didn't receive a bonus,
15 the other years, those have generally been larger
16 than the bonuses that you received at Ford, haven't
17 they?

18 A. I wouldn't say that. Probably a mix.
19 Probably goes both ways.

20 Q. In the records that I've reviewed show
21 that in 2000, from ZF Batavia you received a bonus
22 that was just a little over \$9,900. Does that
23 sound accurate, as far as you know?

24 A. I can't recall here. I'd have to look

1 at records. We'll trust yours right now.

2 Q. Okay. The records that -- that I have
3 also show that, for example, in 1998, which was
4 your last full year as a Ford employee, the amount
5 of your profit sharing bonus was a little over
6 \$4,700. Does that sound right?

7 A. You've got the sheet, yeah.

8 Q. I'm just wondering --

9 A. I don't know. Well, the year prior to
10 that --

11 Q. -- if you have any reason to doubt --

12 A. -- what was it?

13 Q. The records that I have, Mr. Pearce,
14 show that for '96, you received a bonus of \$3,069;
15 for '97 you received a bonus of \$3,071.

16 A. Okay.

17 Q. You wouldn't dispute, by the way,
18 would you, that, in terms of your annual W-2 wages,
19 those have been larger at ZF Batavia than they ever
20 were at Ford?

21 A. No.

22 Q. No, you wouldn't dispute that?

23 A. I would not dispute that. I worked
24 more overtime.

1 Q. In fact, they've been quite a bit
2 larger. The records I reviewed show that your 1998
3 W-2 wages for Ford in your last full year there
4 were approximately 96,000 and some change. Does
5 that sound about right?

6 A. Again, you got the records.

7 Q. No reason to doubt it?

8 A. Yeah, why should I doubt it?

9 Q. In 2001, for example, I believe those
10 records show that from ZF Batavia, you received
11 136,000 and some change?

12 A. Yes.

13 Q. Okay.

14 A. But I worked more overtime.

15 Q. Okay. Your -- just your base salary,
16 though --

17 A. Oh, base salary increased as well,
18 yes.

19 Q. -- at ZF Batavia -- okay. Now, you
20 testified about the transition bonus and I believe
21 you said that you thought part of that was also an
22 enticement to encourage you to sign at ZF Batavia?

23 A. That's the way I kind of looked at it,
24 yes.

1 Q. Now, you also received a signing
2 bonus, separate and apart from the transition
3 bonus, right?

4 A. Yes.

5 Q. Okay. And wasn't the signing bonus
6 really the enticement to sign on, as opposed to the
7 transition bonus?

8 A. I don't think so. I don't think that
9 would entice very much.

10 Q. It was a small --

11 A. You read it. You read it.

12 Q. It was a small signing bonus, okay.
13 But the transition bonus, as you understood it, was
14 there were going to be some differences in benefits
15 and that's what the transition bonus went towards?

16 A. Yes.

17 Q. Okay.

18 A. 20 years' loss of A plan is probably
19 that amount of money.

20 Q. Did anyone communicate to you that
21 that's everything that that transition bonus was
22 designed to cover?

23 A. No, I wouldn't say that, but --

24 Q. Did you ever get any specific

1 communication as to here's what the transition
2 bonus covers?

3 A. No.

4 Q. With respect to the AIP bonuses and
5 the one year that you didn't receive a bonus from
6 ZF Batavia, do you have any reason to believe that
7 anyone from Ford was involved in your not receiving
8 an AIP bonus that year?

9 A. I have no way of knowing that if they
10 knew anything about it in the beginning, I can't
11 imagine that they don't know anything about it now.

12 Q. What do you mean, "in the beginning"?
13 I'm not sure what I -- I'm not sure I understand
14 what you mean by that.

15 A. In other words, when the -- when the
16 bonuses were first issued by ZF Batavia or lack of
17 bonuses, whether they knew this procedure was being
18 used for the bonus, I can't answer that 'cause I
19 have no way of knowing.

20 Q. Okay.

21 A. But I can't believe that they haven't
22 heard that --

23 Q. No, I understand.

24 A. -- people were -- think that it was

1 unequitable how they did the plan.

2 Q. Okay. And my question is not -- you
3 may have answered it and I think you did. My
4 question is not whether Ford may have heard
5 afterwards, but whether, as you sit here today, you
6 have any evidence that Ford was actually
7 involved --

8 A. No.

9 Q. -- in that decision?

10 A. No.

11 Q. Okay. Now, getting in on the ground
12 floor of CVT, have you ever posted for any
13 positions working in CVT?

14 A. There's no postings for it.

15 Q. Have you ever went to -- to your boss
16 and said, I want to go work in CVT?

17 A. In the beginning, we asked people and
18 said that we were very interested in being in CVT.

19 Q. "In the beginning," would be when?
20 Can you narrow that down?

21 A. When the joint venture first happened.

22 Q. Before you accepted, you said, I'd
23 like to be in CVT, if possible?

24 A. I'd say before and after --

1 Q. Okay.

2 A. -- I accepted.

3 Q. When you say "after," can you narrow
4 that down to a time frame? Was it immediately
5 after or was it three years after?

6 A. No, I can't.

7 Q. This year, 2003, you --

8 A. No, I did not ask this year.

9 Q. Okay. Do you remember asking last
10 year, 2002?

11 A. I'll say no.

12 Q. What about the year before, 2000?

13 A. There, I can't remember.

14 Q. Do you have any reason to believe that
15 anyone from Ford has been involved in the decision
16 not to assign you to a job in CVT?

17 A. In Ford, I'd have to say no.

18 Q. You also testified about changes in
19 vacation, but I believe that what your testimony
20 was that those changes haven't affected you.
21 You're getting all the vacation that you believe
22 you're entitled to. Is that a fair statement?

23 A. Getting all the vacation that I am
24 entitled to per Exhibit 2 --

1 Q. Okay.

2 A. -- not what I would have at Ford.

3 Q. I understand. But you understood when
4 you accepted employment with ZF Batavia --

5 A. Yes.

6 Q. -- that there was going to be a
7 difference?

8 A. Yes.

9 Q. Okay.

10 A. And that's probably what some of the
11 money was about, for -- it was something like that.

12 Q. Okay. Now, personal days. I believe
13 you testified that they were -- went from five to
14 three and then back to five. Is that what
15 happened --

16 A. Yes.

17 Q. -- on personal days? Do you have any
18 reason, as you sit here today, to believe that
19 anyone from Ford was involved in the decision to
20 reduce the amount of personal days at ZF Batavia
21 from five to three?

22 A. Again, I'm going to answer that saying
23 I can't believe labor relations is not reviewing
24 some of these things with the board, of which Ford

1 people are on that board and should be aware of it.

2 Do I know for a fact that they're aware of it, no.

3 Should they have been aware of it, yes.

4 Q. Okay. Now, labor relations, those are
5 folks that deal with the hourly employees, right?

6 A. HR, then.

7 Q. I -- I just want to make sure I
8 understand the distinctions. So it's your
9 understanding that it seems like someone in HR
10 would have communicated that to the board of
11 directors?

12 A. I would think, yes.

13 Q. Okay.

14 A. And Ford was part of the board of
15 directors.

16 Q. Right. Outside of Ford's involvement
17 as being a member -- or having members on the board
18 of directors, do you have reason to believe that
19 Ford was otherwise involved in the decision to
20 reduce the number of personal days?

21 A. Run that by me one more time.

22 Q. Sure. I'll try to make it less
23 confusing. You've testified that you believe if
24 Ford was involved, it was through their membership

1 on the board of directors.

2 And my question is, other than through
3 their involvement, having members on the board of
4 directors, do you believe that Ford was in any
5 other way involved in the decision to reduce the
6 personal days?

7 A. And I'm going to go back and say the
8 board of directors is telling ZF to get their costs
9 down. So, therefore, they may have been aware of
10 it.

11 Q. Okay. What about bereavement leave,
12 do you have any reason to believe that Ford may
13 have been involved to reduce the amount of
14 bereavement?

15 A. I'm going to go with the same answer.

16 Q. Same as for personal days?

17 A. Yes.

18 Q. Okay. Did anyone ever communicate to
19 you -- prior to the time that you accepted
20 employment with ZF Batavia, did anyone ever
21 communicate to you that you would receive the same
22 AIP bonus as those in the front office would
23 receive?

24 A. We never had the vision prior to ZF.

1 It was a plan. Nobody -- why would anybody
2 communicate that to me?

3 Q. I understand. I think you've answered
4 it, but my question is just, did anyone communicate
5 that to you? And I believe your answer is no, no
6 one communicated that?

7 A. Nobody distinguished those two
8 examples that you gave.

9 Q. Okay. Now, at the time you changed
10 your mind, decided to go ahead and accept the new
11 offer from ZF Batavia, had you received an offer to
12 go to another Ford plant at that point?

13 A. No.

14 Q. What was your understanding as to what
15 was going to happen to you?

16 A. I would be offered an opportunity to
17 interview for three different locations.

18 Q. Had you had any interviews at the time
19 you accepted --

20 A. No, we hadn't even asked for
21 interviews at that point in time.

22 Q. Okay. While you were with Ford, was
23 it your understanding that your work assignments
24 were subject to change?

1 A. Any place you work, work assignments
2 are subject to change.

3 Q. And Ford wasn't any different than any
4 other place you'd worked in that respect --

5 A. No.

6 Q. -- right? You testified regarding
7 Exhibit 2, the tri-fold brochure, and the language
8 in there, the subject to change language that you
9 were asked questions about. And I believe it was
10 your testimony that you believe certain things were
11 subject to change, but not other things.

12 When did you first come to the
13 understanding that some things in Exhibit 2 were
14 subject to change and other things were not?

15 A. My past work history has -- has told
16 me and -- and even at Ford, that certain things
17 change. They change with the union contract. They
18 change -- you know, with companies -- you know they
19 change with the economy. And that's, again,
20 medical plans, dental plans, certain things like
21 that. Pension plans and pay practices normally
22 don't change.

23 Q. Have you ever worked anywhere pay
24 practices did change?

1 A. No. Glad you asked that.

2 Q. Okay. So your understanding was just
3 based on your experience in the workplace, that pay
4 practices wouldn't change?

5 A. Right. I knew what I had going in,
6 yes.

7 Q. Going in? I guess I'm not clear. Are
8 you saying that you believed on day one, things
9 would be as they were communicated there, or that
10 for the entirety of your employment at ZF Batavia,
11 the next 15, 20 years, however long that might be,
12 that things would never change?

13 A. I did not think some of the items in
14 this Exhibit 2 would change while I was still at
15 Batavia --

16 Q. Okay.

17 A. -- to the day I retired.

18 Q. And those things that you believed
19 would not -- would never change, what would those
20 things be?

21 A. Not being paid for overtime in the
22 management role that I'm in. I did not believe
23 that my salary would go down. I believed that --
24 you know, the number of hours that we worked may --

1 may decrease -- you know, if all the overtime wasn't
2 required, okay? But if overtime was required, I
3 believed I was going to be paid for it.

4 I did not believe that my pension was
5 going to be changed because that -- obviously I
6 wouldn't have thought that, I wouldn't have gone at
7 all because that's a long time out for me, even
8 now.

9 Q. Anything other than overtime, salary
10 and pension that you believed would never change?

11 A. That's -- I can't think of anything
12 right now.

13 Q. Okay. Now, you understood that once
14 you accepted employment with ZF Batavia, that that
15 was the end of your Ford employment, right? That
16 you wouldn't be employed by Ford any more?

17 A. I would not be employed by Ford is
18 correct. I would still be associated with Ford.

19 Q. Through the fact that Ford was a 49
20 percent shareholder in the joint venture?

21 A. No, through the fact that I've got a
22 retirement with Ford, okay? I've got ties to Ford.
23 I supposedly have pensions that ZF and Ford will
24 tie together so that they're within a few dollars.

1 So to say that I totally thought I was going to 100
2 percent sever from Ford, okay, no.

3 Q. Okay. No, I understand that.

4 A. Was Ford going to be on my paycheck,
5 no.

6 Q. And other than Ford continuing to
7 administer and be responsible for your pension, did
8 you believe that on a going-forward basis, that you
9 were going to receive any other benefits from Ford,
10 other than your pension and other benefits you
11 might receive then at retirement?

12 A. No.

13 Q. And you understood, didn't you, that
14 once you became a ZF Batavia employee, that you
15 were going to have to follow their policies and
16 procedures?

17 A. I don't agree to that.

18 Q. When you were with Ford, you had to
19 follow Ford's policies and procedures, right?

20 A. Yes.

21 Q. I mean, they were your employer --

22 A. Yes.

23 Q. -- and if the boss put in a policy,
24 you had to follow it, right?

1 A. Yes.

2 Q. And didn't you expect that the same --

3 A. No, I'm --

4 Q. Let me get my question out. Didn't
5 you expect that the same thing, then, would happen
6 over at ZF Batavia, that if ZF Batavia, who was now
7 your new boss, would put in a policy, that you'd
8 have to follow that policy?

9 A. No. And the reason being is being a
10 transitional, there was an agreement for
11 transitional employees and then there's new ZF
12 employees. If there wasn't a difference between
13 the two, why -- why do you distinguish between the
14 two?

15 Q. And by "agreement," are you referring
16 to Exhibit 2 and your offer letter? Is that what
17 the agreement was?

18 A. And the prior meetings that was held
19 with Ford at -- at the location with us. Those
20 kind of things.

21 Q. Okay. Now, in those prior meetings,
22 did anyone stand up and say, Things are subject to
23 change?

24 A. I'm going to say I don't recall them

1 saying that 'cause I would think that that would
2 stick out.

3 Q. Right. I mean, that must have
4 concerned you, right? No one had ever said subject
5 to change, and then you read in the brochure that
6 things were subject to change. Didn't that concern
7 you that this was different than what had been
8 communicated at the employee meeting?

9 A. No.

10 Q. Well, let's see. You said Hassan and
11 I think Karl Kehr and the other individuals who
12 were at the employee meetings, those are all people
13 that communicated with you about what things would
14 be like at ZF Batavia, right? Let me ask it this
15 way.

16 A. In management positions?

17 Q. Right.

18 A. Yes.

19 Q. Other than Hassan, was everyone else,
20 people who were at the employee meetings and
21 communicated to you in that way --

22 A. Yes. There was no one on ones.

23 Q. Okay. In terms of -- let's focus on
24 Hassan, then. Do you have any reason to believe

1 that Hassan was not being truthful with you when he
2 had communications with you about what he believed
3 things would be like at ZF Batavia?

4 A. Why would -- I don't -- why wouldn't
5 he be truthful?

6 Q. I'm asking, do you have any reason to
7 believe he was lying to you?

8 A. He's a representative of management.
9 He worked for Ford. He had more years with Ford
10 than I did.

11 Q. You believed what he said?

12 A. Why wouldn't I?

13 Q. Do you have any reason to believe that
14 at the time Hassan had those communications with
15 you, that he really knew that ZF Batavia, down the
16 road, was going to change some policies and change
17 some benefits? Do believe he knew that at the
18 time --

19 A. No.

20 Q. -- he told you? Do you believe that
21 any of the individuals who were present at the
22 employee meeting then who communicated with you
23 about benefits, et cetera, that they really knew
24 that a couple years down the road, ZF Batavia would

1 change its policies or change your benefits?

2 A. Do that one one more time.

3 Q. Sure. You've testified about
4 communications that were made in employee meetings,
5 cafeteria meetings. Do you have any reason to
6 believe that any of those individuals who
7 communicated with you about what things were going
8 to be like at ZF Batavia, that at the time they
9 made that communication to you, that they knew
10 that, down the road, ZF Batavia was going to change
11 things on you?

12 A. Okay. I think you're asking me, did
13 the people making the presentation know in advance
14 if any of these things were going to be changed
15 when they told us?

16 Q. Yes. Do you have any reason to
17 believe that they knew --

18 A. And that's it, right?

19 Q. Yes, sir.

20 A. I have no way of knowing. They have
21 to settle the merger. They have to -- they have
22 to -- you know, they're a salesman to some degree.
23 So I don't know what they knew.

24 Q. Okay. You testified that there are

1 still -- or that Ford is still bringing employees
2 back to the ZF Batavia plant?

3 A. That's correct.

4 Q. Other than hourly employees, UAW
5 represented employees, how many Ford employees are
6 present at the ZF Batavia plant today?

7 A. I'm going to guess around 10.

8 Q. And are all those employees engineers?

9 A. No.

10 Q. How many of that 10 are engineers?

11 A. Let's -- let's go with half right now.
12 I don't know what that number would be, but let's
13 say half.

14 Q. Okay. Who are the other employees
15 other than the engineers, Ford employees that are
16 at the Batavia plant? Can you name them?

17 A. Rob Kurtz. There's a production
18 superintendent on the case line.

19 Q. Mr. Kurtz is a production
20 superintendent?

21 A. Or maybe a manager. I don't know
22 their titles anymore.

23 Q. And he's a Ford employee?

24 A. He's a Ford employee.

1 Q. How long has he been at the Batavia
2 plant, do you know?

3 A. Since it opened, I think.

4 Q. Anyone else?

5 A. Jim Billman. He's an engineer.
6 George Barry, he's an engineer. We had Tom Farris,
7 who retired roughly -- I don't know, three months,
8 six months ago. He was a production person in the
9 case line.

10 Q. Do you know, did he retire in '02 or
11 '03?

12 A. I'm going to say '03. I really don't
13 know.

14 Q. Okay. Anyone else that you can think
15 of other than those individuals that you --

16 A. Can't think of right now.

17 Q. Okay.

18 A. Oh, yeah. You got Ed Zix?

19 Q. What? I'm sorry.

20 A. Ed Zix. He's a -- he's installing
21 CVT, which is the same -- the same kind of job that
22 I would do and he's a Ford employee installing CVT
23 on the ground floor and I'm working maintenance
24 'cause I can't be in CVT. And he's a Ford

1 employee.

2 Q. Has anyone ever told you that you
3 can't be in CVT?

4 A. Directly, no; indirectly, yes. I stay
5 where I'm at to keep the plant running. That's why
6 I'm where I'm at.

7 Q. You say "indirectly." Someone has --
8 I'm not sure I understand. Has someone told you, I
9 can't move you to CVT?

10 A. I -- I was told that I wasn't going to
11 CVT to install the equipment because I was needed
12 exactly where I was at to keep that section of the
13 plant running.

14 Q. Mr. Zix, do you know how long he's
15 been at the Batavia plant?

16 A. Over 10 years 'cause he was there when
17 I got there --

18 Q. Okay.

19 A. -- and he was supposed to be gone a
20 year after I signed up with ZF, but he's still
21 there.

22 Q. Anyone else you can think of that's a
23 Ford employee that's still out at Batavia?

24 A. Not right this minute.

1 MR. VANWAY: Okay. I don't think I
2 have any further questions, Mr. Pearce. Thank you.

3 (2:19 p.m.)

4 EXAMINATION

5 BY MR. HUNTER:

6 Q. Mr. Pearce, I have just a few follow-
7 up questions. When we spoke about your damages in
8 this case, we talked about overtime and things like
9 that. Certainly you have always received your
10 salary from ZF Batavia?

11 A. Yes.

12 Q. Okay. You've never been docked or
13 anything like that?

14 A. We probably ought to define "docked."

15 Q. Your salary, 73 -- I forget what your
16 salary is now off the top of my head.

17 A. My base salary has never been docked?

18 Q. Yes.

19 A. I'll answer yes to that.

20 Q. Okay. And when was it docked?

21 A. No, no, has not been.

22 Q. Okay.

23 A. I'm sorry.

24 Q. There we go. All right. And we talk

1 about a base salary. I mean, you only have one
2 salary, correct? And then you have overtime
3 compensation?

4 A. Yes.

5 Q. All right. To your knowledge, have
6 any salaried employees had their salary docked?

7 A. I'm going to clarify it by, again,
8 going back and saying their -- their -- when you
9 say "salary," I'm calling that base.

10 Q. And I'll try to call it base salary.

11 A. To my knowledge, no.

12 Q. All right.

13 A. Okay.

14 Q. And I understand that folks haven't
15 had overtime paid as you believe is appropriate,
16 but in terms of their base salary, that has not
17 been docked, as far as you know for any --

18 A. Not that I'm aware of.

19 Q. And that would include Ford
20 transitionals and or ZFBA new hires, correct?

21 A. Again, not that I'm aware of. I don't
22 know.

23 Q. Okay. Have you ever had anyone --

24 A. I'm going to change that --

1 Q. Okay.

2 A. -- 'cause we've had some people that
3 were disciplined that were ZF employees and I'm
4 trying -- we had Dan Sullivan with a safety
5 violation that was sent out of the plant for two
6 weeks. I don't know whether he was docked or not.
7 We were told he was. So there would be a case
8 where he was docked. But I bet that was for a
9 discipline case.

10 Q. Okay. And you're not sure if he was
11 docked, but I would assume if he was on suspension,
12 he probably didn't get paid.

13 A. There's no way for me to know. I
14 don't need to know.

15 Q. Okay. All right. Anybody else that
16 you can think of?

17 A. Again, it would only be people that
18 were sent out for discipline for whatever reason.
19 There's a couple others, and I can't even think of
20 their names right now. And, like I said, I don't
21 need to know whether they were docked or not.

22 Q. Okay. And with respect to yourself,
23 for example, nobody has ever come back and said,
24 Jeez, Ron, we need to adjust your pay because your

1 time sheets don't match with the Honeywell reader
2 or anything like that?

3 A. Well, right now, I'm punching in the
4 plant, out of the plant. I fill out a base salary
5 time sheet and I fill out a overtime time sheet and
6 also have been told by various people that security
7 is writing my times down when I enter and exit the
8 plant. I guess somebody is trying to see if I'll
9 screw up on one of the sheets of paper. And the
10 answer is, yes, sooner or later I'll screw up,
11 but --

12 Q. Okay.

13 A. -- I'll guarantee you it's not
14 intentional --

15 Q. Okay.

16 A. -- okay? But I don't know how many
17 times you got to write your time down at this place
18 to make sure that you get paid appropriately, okay?
19 Evidently it's not enough.

20 Q. With respect to -- I think what you've
21 told me, though, is that today nobody has come up
22 and said, Hey, Ron, we gotcha. You screwed up,
23 correct?

24 A. I haven't been docked on my base. I'm

1 going to stay with the base. I'm going to have to
2 say, no, I have not been.

3 Q. Okay. I think --

4 A. You don't want to ask me about
5 overtime, though, do you?

6 Q. I think we covered overtime. I know
7 where you're at on overtime, sir. If we can have a
8 minute here, I think we're all set.

9 (Off the record: 2:23 p.m. - 2:30 p.m.)

10 MR. VANWAY: I have one. John, did
11 you have any more?

12 MR. HUNTER: No, I have nothing
13 further.

14 EXAMINATION

15 BY MR. VANWAY:

16 Q. Mr. Pearce, just one more question.

17 At the time you accepted the second offer,
18 September of 1999, do you know, was Hassan already
19 on board as a ZF Batavia employee at that time?

20 A. In all honesty, I don't know.

21 Q. Okay.

22 A. I would assume that he was, but I
23 don't know.

24 Q. Your understanding, as he was talking

1 to you about the offer, that he was already a ZF
2 Batavia employee?

3 A. Like I said, I really don't know.

4 MR. VANWAY: Okay. That's all I have.
5 Thank you.

6 MR. SIMON: I have no questions and we
7 won't waive signature.

8 (Deposition concluded at 2:30 p.m.)

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Charles R. Pearce

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1 C E R T I F I C A T E

2

3 STATE OF OHIO :

4 : SS

5 COUNTY OF HAMILTON :

6

7 I, Susan M. Barhorst, a Notary Public in
8 and for the State of Ohio, duly commissioned and
9 qualified, do hereby certify that prior to the
10 giving of this deposition the within-named CHARLES
11 R. PEARCE was by me first duly sworn to testify the
12 truth, the whole truth, and nothing but the truth;
13 that the foregoing pages constitute a true,
14 correct, and complete transcript of the testimony
15 of said deponent, which was recorded in stenotypy
16 by me, and on the day of October 2003 was
17 submitted to counsel for deponent's signature.

18 I further certify the within deposition was
19 duly taken before me at the time and place stated,
20 pursuant to the Federal Rules of Civil Procedure;
21 that I am not counsel, attorney, relative or
22 employee of any of the parties hereto, or their
23 counsel, or financially or in any way interested in
24 the within action, and that I was at the time of

1 taking said deposition a Notary Public in and for
2 the State of Ohio.

3 IN WITNESS WHEREOF, I have hereunto set my
4 hand and notarial seal at Cincinnati, Ohio, this
5 day of October 2003.

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Susan M. Barhorst, Notary Public
in and for the State of Ohio.
My commission expires
February 18, 2004